

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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June 15, 2005

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Subject: *In re Michael J. and Amy J. Groetken,*
Chapter 7; Bankr. No. 05-40215

Dear Counsel:

The matter before the Court is the Motion for Return of Garnished Funds filed by Debtors and the response filed by Hauge Associates, Inc. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014(c). As set forth below, the motion will be denied.

Summary. Michael J. and Amy J. Groetken ("Debtors") filed a Chapter 7 petition on February 25, 2005. In their schedules filed March 7, 2005, Debtors did not list any funds or other property that was held by another person.¹

On March 17, 2005, Debtors filed a Motion for Return of Garnished Earnings. Therein, Debtors stated that Hauge and

¹ As an apparent attempt at a "catch-all" entry, Debtors listed under their personal property schedule, question 33, "Misc. personal property not otherwise listed," and they claimed this same miscellaneous exempt at a value of \$50.00. No one timely filed an objection to Debtors' claimed exemptions. Question 33 on SCHEDULE B - PERSONAL PROPERTY directs a debtor to list "Other personal property of any kind not already listed. Itemize." Debtors obviously did not itemize as directed.

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Associates had garnished Debtor Michael Groetken's wages and that on February 28, 2005, Hauge and Associates received \$202.89 in garnished wages. Debtors wanted this money returned to them. They argued Hauge and Associates had violated the automatic stay when they received the garnishment.

Hauge and Associates timely objected to Debtors' Motion. It stated it did not object to returning the funds but argued the funds belonged to the bankruptcy estate, not Debtors, under 11 U.S.C. § 541. Hauge and Associates also stated it learned of Debtors' bankruptcy the same day it received the garnished wages.

By letter dated April 7, 2005, the Court directed Debtors to provide wage statements regarding the garnished funds. The Court advised Debtors that the funds would be paid to them only if the money was not property of the estate, i.e., only if the wages were earned post-petition. Debtors filed two wage statements on May 20, 2005. The first was for work performed by Debtor Michael Groetken between January 16 and 29, 2005, when \$215.90 was garnished, and the second was for work performed by Debtor Michael Groetken between January 29 and February 12, 2005, when \$202.89 was garnished. Since Debtors' filed their petition on February 25, 2005, the wages that were garnished were all earned pre-petition.

Discussion. The Court agrees with Hauge Associates that the garnished funds it received on February 28, 2005, belong to the bankruptcy estate. The funds represent pre-petition wages, and those pre-petition wages are estate property. 11 U.S.C. § 541(a)(1) and (a)(3). Hauge Associates properly turned over the garnished funds to the case trustee.

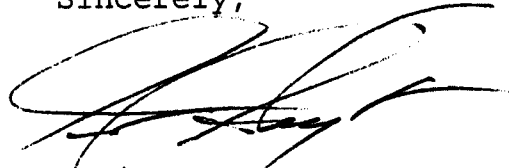
Debtors have no claim to these garnished wages. They did not declare the funds exempt, nor could they do so since S.D.C.L. § 21-18-53 limits the extent to which wages are protected by state law exemptions. See *In re Gregory D. Zike, Sr.*, Bankr. No. 03-41477, slip op. (Bankr. D.S.D. Dec. 30, 2003).

The Court also concludes that Debtors are not entitled to any damages. Hauge and Associates did not garnish any additional wages once it learned of the bankruptcy. It promptly paid over the wages to the case trustee when a dispute arose. Thus, there was no willful violation of the stay as required for damages under 11 U.S.C. § 362(h). Moreover, Debtors also did not identify any damages they incurred.

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Debtors' Motion for Return of Garnished Earnings will be denied. Each party shall bear their own costs, including attorneys' fees. An appropriate order will be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

JUN 15 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By MIN

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

JUN 15 2005

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

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